

# WETLANDS COUNCIL

## MINUTES

November 15, 2016

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The Wetlands Council met on Tuesday, November 15, 2016 in Room 208C at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Sheridan Brown, Carol Henderson, James Kennedy, Deborah Lievens, Richard Mellor, Seth Prescott, Russ St. Pierre, and Robert Snelling

**Absentees:** Councilors: Ryan Crosbie, Susan Slack, and Bob Wolff

Also present was: Carolyn Guerdet, Council Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:01 a.m. with introductions and a quorum present.

### 1. Approval of Minutes

- *Councilor Prescott made a motion to accept the September 13, 2016 meeting minutes, second by Councilor St. Pierre. Motion passed unanimously with Councilor Brown abstaining.*

### 2. Public Input: None

### 4. New Business

ARM Fund Report – Lori Sommers and Melinda Bubier, Wetlands Bureau Mitigation

Lori and Melinda presented the 2016 ARM Fund report. There were 9 service areas with 40 pre-proposals received in March 2016. 25 full applications were then received in August. 5 days of site visits were conducted. In October the Site Selection committee met with the federal agency representatives and recommendations were made. One project was deemed ineligible and the committee decided on 21 of the 25 projects. The Council reviewed the project information and discussed each project individually. Council had extensive discussion on the requirement for public access for ARM land protection projects. The Council's acceptance of each project is as follows:

#### **Pemigewasset-Winnepesaukee River Service Area (Available funding: \$107,500)**

The Committee decision remains under consideration pending receipt of a response from the Town of Belmont. The final recommendation will be presented to the Wetland Council at a future meeting.

Fully fund the Page Pond in Meredith was distributed on November 15, 2016 as there had been a change.

- *Councilor Henderson made a motion to approve \$107,500 for the Page Pond project in Meredith, second by Councilor Lievens. Motion passed unanimously.*

#### **I-93 CTAP Communities Service Area (Available funding: \$828,000. Note that projects in these communities were also eligible for funds from their respective Service Area):**

### 1.

- *Councilor Kennedy made a motion to approve \$100,000 for the Portsmouth Stream Restoration Project in Concord, second by Councilor Snelling. Motion passed unanimously.*

2.
  - *Councilor Mellor made a motion to approve \$400,000(\$153,890 will be funded from the Merrimack service Area) with the balance to come from the CTAP for the Tower Hill Pond Project, second by Councilor Lievens. Motion passed with one nay.*
3.
  - *Councilor Prescott made a motion to approve providing NHFG \$400,000(\$154,000 will be funded from the Merrimack Service Area) to conserve 2 parcels adjacent to the Musquash Conservation Area, second by Councilor Brown. Councilors Lievens and Henderson recused themselves from the vote. Motion passed unanimously.*
4.
  - *Councilor Lievens made a motion for the Southeast Land Trust \$40,000 for the Upper North Branch River property, second by Councilor Mellor. Motion passed unanimously.*
5.
  - *Councilor Henderson made a motion to approve providing SELT \$85,000(with \$10,850 to be funded from the Salmon Falls-Piscataqua Rivers Service Area) for the acquisition of the Horsburgh property in Fremont, second by Councilor Snelling. Motion passed unanimously.*
6.
  - *Councilor Kennedy made a motion to provide the Town of Salem \$150,000 for the Salem Town Forest Project located in Salem, entire amount to come from CTAP, second by Councilor Snelling. Motion passed unanimously.*

**Salmon Falls to Piscataqua River Service Area (Available funding: \$103,900 tidal, \$234,800 non-tidal):**

1.
  - *Councilor Lievens made a motion to approve providing SELT \$61,545 for the Isinglass River Floodplain Protection Project in Barrington, second by Councilor St. Pierre. Motion passed unanimously.*
2.
  - *Councilor Brown made a motion to approve providing \$149,805 for the Sawyer Mill Dam Removal Project in Dover, second by Councilor Henderson. Motion passed unanimously.*
3.
  - *Councilor Brown made a motion to approve providing the Town of Barrington \$50,000 for the Upper Oyster River Passage Project, second by Councilor Lievens. Motion passed unanimously.*
4.
  - *Councilor Mellor made a motion to approve partial finding of \$38,240 to SELT for the permanent protection of Rollins Brook Headwaters Project in Nottingham, second by Councilor Kennedy. Motion passed unanimously.*

**Merrimack River Service Area (Available funding: \$489,000):**

1.
  - *Councilor Snelling made a motion for partial funding of \$89,000 to the Brookline Conservation Commission for the acquisition and limited bank restoration on the Austin Parcel located on the Nissitissit River, second by Councilor Lievens. Motion passed unanimously.*
2.
  - *Councilor Mellor made a motion to approve providing The Francestown Land Trust (FLT) \$83,850 for the Brennan Brook Confluence Project located in Francestown, second by Councilor Lievens. Motion passed unanimously.*
3.
  - *Councilor Henderson made a motion to approve providing The Milford Conservation Commission (MCC) up to \$8,260 for the Hitchiner Town Forest Project, second by Councilor Prescott. Motion passed unanimously.*

**Lower Connecticut River Service Area (Available funding: \$269,500):**

1.
  - *Councilor Brown made a motion to approve providing \$105,000 to the Monadnock Conservancy for the acquisition of the 72-acre Chamberlain property located on the southern shore of Sip Pond in the Town of Fitzwilliam, second by Councilor Mellor. Motion passed unanimously.*
2.
  - *Councilor Snelling made a motion to provide \$168,500 (\$4,000 will be utilized from funds not used in a restoration project and being returned to the fund) to the Upper Valley Land trust (UFLT) to purchase 110 acres of forested property in Lebanon and place a permanent conservation easement on it, and convey it to the City, second by Councilor Lievens. Councilor Kennedy recused himself. Motion passed unanimously.*

**Contoocook River Service Area (Available funding \$24,000):**

1.
  - *Councilor Henderson made a motion to approve provide the Town of Henniker/Azalea Park Committee \$24,000 toward installation of stormwater management, second by Councilor Mellor. Motion passed unanimously.*

**Middle Connecticut River Service Area (Available funding \$367,500):**

1.
  - *Councilor Snelling made a motion to provide \$252,240 to the Hanover Conservancy for purchasing an easement on the Shumway Forest on Moose Mountain, second by Councilor Lievens. Motion passed unanimously.*

**Upper Connecticut River Service Area (Available funding \$94,800):**

1.
  - *Councilor Kennedy made a motion to provide partial funding \$79,800 to the Nature Conservancy (TNC) to protect and restore 71.57 acres along the Connecticut River in Colebrook, second by Councilor Mellor. Councilor Henderson recused herself. Motion passed unanimously.*
2.
  - *Councilor Brown made a motion to approve \$15,000 to Trout Unlimited (TU), for Nash Stream restoration, second by Councilor Snelling. Councilor Henderson and Councilor Prescott recused themselves. Motion passed unanimously.*

A break was taken at this time.

**3. Status Report**

**I. New Appeals**

**Docket No. 16-13 WtC – Intervale Country Club Appeal**

Subject: 7/7/16 denial of Wetlands permit, file #2016-00304

Hearing Officer: Not assigned

Status: August 3, 2016 received Petition for Appeal. October 17, 2016 issued Insufficient Appeal letter.

**II. Decisions that need to be written/finalized and issued.**

**Docket No. 14-16 WtC – David and Louise Drolet, et al. Appeal**

Subject: 11/10/14 permit approval #2014-00246 issued to Green and Company

Hearing Officer: David Conley, Esq. appointed by AG on 3/13/15

Status: October 19, 2015 received Motion to Continue. 10/21/15 received Objection to Appellant's Motion to Continue Hearing. 10/26/15 issued letter granting Motion to Continue and rescheduling hearing for February 9, 2016 at 9 a.m. November 24, 2015 received Appellant's Witness and Exhibit List. Hearing was held February 9, 2016 and deliberations were held on 2/16/16. Hearing Officer to issue decision within 90 days (5/16/16). Councilor Henderson noted that on top of page 3 of the Decision it should be 'disturbance' of an area not 'wetlands'. Decision was adopted at the June 14, 2016. 6/14/16 issued Decision and Order denying Petition for Appeal. July 13, 2016 received Appellant's Motion for Reconsideration. 7/19/16 received Partially Assented-to Motion to Extend Time to file Objection. 7/25/16 issued letter granting Partially Assented-to Motion to Extend Time to File Objection. 7/22/16 received Permittee's Objection to Motion for Reconsideration. Decisions were by chairman and hearing officer. November 7, 2016 issued Decision denying Motion for Reconsideration.

**Docket No. 15-12 WtC – N. Miles Cook III Appeal**

Subject: 10/9/15 denial of permit application #2015-00960

Hearing Officer: David Conley, Esq. appointed by AG on 2/22/16

Status: November 5, 2015 received Petition for Appeal. 11/9/15 issued receipt of Appeal letter. 11/20/15 received Appearance from Atty. Maloney for DES. Council to accept or dismiss at their February 9, 2016 meeting. Appeal was accepted at the February 9, 2016 Council meeting. 2/23/16 issued Appeal accepted letter. 2/25/16 issued notice of Pre-hearing Conference schedule for 3/28/16 at 9:30 a.m. 3/28/16 issued Pre-hearing Order scheduling hearing for June 14, 2016 at 9 a.m. May 13, 2016 received State's Witness and Exhibit List. 5/13/16 received Appellant's Witness and Exhibit List. June 2, 2016 received motion to Continue Hearing. 6/8/16 issued letter granting Motion to Continue Hearing, rescheduling it for August 9, 2016 at 9 a.m. Hearing held August 9, 2016. Deliberations were held August 30, 2016. Appeal was denied on a 5-5 vote. Hearing Officer is working on the Decision.

**Docket No. 16-09 WtC Brox Environmental Citizens Appeal**

Subject: 4/26/16 Decision of Complaint #3066 regarding dredge and fill at Brox Town Land.

Hearing Officer: Not assigned.

Status: Appeal filed on May 25, 2016. 5/26/16 issued receipt of Appeal. Town of Milford filed Motion to Intervene on June 30, 2016. Appeal dismissed at the August 9, 2016 meeting. Appeal denied letter sent out September 8, 2016.

**III. Hearings or PHCs Pending**

**Docket No. 16-11 WtC – Alain Breault Appeal**

Subject: 5/16/16 denial of wetlands Permit #2016-00187

Hearing Officer: Not assigned.

Status: The Councilors did have a copy of the appeal, no motions for summary dismissal received. It was found to be in order. June 15, 2016 received Petition for Appeal. 6/16/2016 issued Receipt of Appeal letter. Appeal accepted at August 9, 2016 meeting. Appeal was withdrawn via email on November 1, 2016.

**Docket No. 16-12 WtC – William M Ranney Appeal**

Subject: 6/23/16 Approval of Shoreland Permit #2016-01071

Hearing Officer: 11/7/16 Requested Hearing Officer be assigned.

Status: July 5, 2016 received Request for Appeal. 7/14/16 issued Insufficient Appeal letter. 7/19/16 received Revised Appeal. 7/20/16 issued Receipt of Appeal letter. Council accepted the appeal September 13, 2016. 9/23/16 received Motion to Intervene from Permittee. November 7, 2016 issued Appeal accepted letter. A Motion to Intervene has been filed. A prehearing conference to be set up with the Hearing Officer.

**IV. Inactive/Status Letter or Pending Settlement/Withdrawal**

**Docket No. 14-12 WtC – Susan and Mark Hilbert Appeal**

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 28, 2014 received Notice of Appeal. 7/30/14 issued insufficient appeal letter. August 8, 2014 received revised Notice of Appeal. 8/11/14 issued receipt of Revised Notice of Appeal. Council accepted appeal

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at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin

for the department. 10/27/14 issued Prehearing Order staying the appeal pending the outcome of the Superior Court Quiet Title action. June 16, 2016 issued request for a status report of the pending appeal. 6/24/16 received appeal status update; still pursuing appeal.

**Docket No. 14-13 WtC – Ergendino Perrone and Robert Gleason Appeal**

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued receipt of appeal letter. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/21/14 received Assented-To Motion to Stay Proceedings. 10/22/14 issued letter granting Motion to Stay Proceedings. July 1, 2015 received appellant's Withdrawal of Counsel Philip Braley. 7/6/15 received appellant's withdrawal of counsel Cooley Arroyo. June 16, 2016 issued request for a status report of the pending appeal. 6/24/15 received appeal status update from Ergendino Perrone. July 8, 2016 received appeal status update from Robert Gleason.

**Docket No. 14-14 WtC – Jeffrey Norton et al. Appeal**

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued insufficient appeal letter. August 6, 2014 received revised Notice of Appeal. 8/7/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/22/14 received Assented-To Motion to Stay. 10/23/14 issued letter granting Motion to Stay. June 16, 2016 issued request for a status report of the pending appeal. 6/28/16 received appeal status update.

**V. Misc.**

**Docket No. 16-15 WtC - Kloppenburg-McCaffery Trust Appeal**

Will be decided upon at the next meeting.

**Docket No. 16-20 WtC - Matthew and Katherine Lowrie, et al., Appeal**

Will be decided upon at the next meeting.

Atty. Demas reviewed the procedure when there is a question of jurisdiction and yet the appeals are also insufficient. It was decided to first to determine jurisdiction. The Council will decide jurisdiction on December 13<sup>th</sup>. A letter of insufficiency will be sent if deemed under the Council's jurisdiction.

**5. Old Business**

**6. Next Meetings –**

December 13, 2016 at 9:00 a.m.

**7. Adjournment**

- ***Councilor Snelling made a motion to adjourn, second by Councilor Lievens. Motion passed unanimously.***

Meeting adjourned at 11:14 a.m.